

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

VirnetX Inc.,

Plaintiff,

v.

Apple Inc.,

Defendant.

Civil Action No. 6:11-cv-563

Jury Trial Demanded

**APPLE INC.'S UNOPPOSED MOTION FOR STAY OF
PROCEEDINGS PURSUANT TO 28 U.S.C. § 1659(a)**

Defendant Apple Inc. (“Apple”) respectfully requests that the Court stay this case pursuant to 28 U.S.C. § 1659(a) until any determination of the United States International Trade Commission (“ITC”) becomes final in an investigation involving U.S. Patent No. 8,051,181 (the “’181 patent”), the same patent asserted by Plaintiff VirnetX Inc., in this case. On November 1, 2011, Plaintiff commenced this case, asserting that Apple infringes the ’181 patent. On November 4, 2011, Plaintiff also filed a complaint in the ITC asserting the ’181 patent against Apple. A copy of the ITC complaint is attached as Exhibit A. After reviewing the ITC complaint, the ITC instituted Investigation No. 337-TA-818, *In the Matter of Certain Devices with Secure Communication Capabilities, Components Thereof, and Products Containing the Same*, and published the Notice of Investigation in the Federal Register on December 7, 2011. Pursuant to 28 U.S.C. §1659(a), Apple moves to stay this litigation pending a final determination of the ITC proceedings.

Section 1659(a) provides:

(a) Stay. In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within—

(1) 30 days after the party is named as a respondent in the proceeding before the Commission, or

(2) 30 days after the district court action is filed,

whichever is later.

28 U.S.C. § 1659(a). Thus, because the ITC investigation involves the same patent as this case, and Apple is the defendant in this action and named as a respondent in the ITC investigation, Apple requests that, pursuant to 28 U.S.C. § 1659(a), the Court stay proceedings until any determination of the ITC becomes final, *i.e.*, until all appeals are exhausted. *In re Princo Corp.*, 478 F.3d 1345, 1353-55 (Fed. Cir. 2007).

Counsel for Apple have conferred with counsel for Plaintiff, and Plaintiff does not oppose Apple's motion to stay.

Respectfully submitted,

Date: December 7, 2011

/s/ Danny L. Williams

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ATTORNEYS FOR APPLE INC.

CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on December 7, 2011, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by, electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: December 7, 2011

/s/ Mark Dunglinson
Litigation Paralegal